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Zoning—VIRGINIA DEFINES SCOPE OF LOCAL POWER TO IMPOSE DEDICATION AND LAND USE REQUIREMENTS UPON INDIVIDUAL LANDOWNERS—*Board of Supervisors v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975).

The power of local legislative bodies to enact zoning ordinances to regulate growth within their territorial jurisdictions has long been recognized.¹ Pursuant to several enabling statutes,² Virginia cities and counties have chosen various means of implementing this regulatory authority.³ In response to this trend, Virginia courts have developed general principles for judicial review of zoning ordinances.⁴ Simply stated, the purpose of a zoning act must be to promote the public health, safety, morals, or general welfare, to conserve and protect the value of buildings, and to encourage the most appropriate use of the land.⁵ If an area is zoned for other purposes or if the locality is arbitrary or discriminatory in applying the ordinance, the locality has exceeded the scope of the police power and the ordinance or its application will be declared void.⁶ Zoning ordinances are presumed

1. The constitutionality of zoning ordinances was recognized by the Supreme Court in the landmark case of *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The Court held that zoning ordinances were a reasonable exercise of the police power and would be upheld unless arbitrary or unreasonable, bearing no relationship to the public health, safety, morals, or general welfare. *Accord*, *Gorieb v. Fox*, 145 Va. 554, 134 S.E. 914 (1926), *aff'd*, 274 U.S. 603 (1927). For a general survey of land use law in Virginia see Note, *Land Use Law in Virginia*, 9 U. RICH. L. REV. 513 (1975).

2. VA. CODE ANN. §§ 15.1-427 to -503 (Repl. Vol. 1973), *as amended*, (Cum. Supp. 1975).

3. *See, e.g.*, RICHMOND, VA., CODE ch. 42 (1968); CHESTERFIELD COUNTY, VA., CODE ch. 17 (1960); Goochland County, Va., Zoning Ordinance, Dec. 1, 1965, *as amended*, Feb. 5, 1974.

4. The case which established the criteria used by the Virginia Supreme Court to evaluate zoning ordinances was *West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 192 S.E. 881, *appeal dismissed per curiam*, 302 U.S. 658 (1937). In that case, appellant owned a clay pit in a region which appellee zoned for residential use only. Appellant sought a rezoning of the area. The court in upholding the city's action defined the power which a local government had in zoning matters. The power was summarized in subsequent cases as follows:

The legislative branch of a local government in the exercise of its police power has wide discretion in the enactment and amendment of zoning ordinances. Its action is presumed to be valid so long as it is not unreasonable and arbitrary. The burden of proof is on him who assails it to prove that it is clearly unreasonable, arbitrary or capricious, and that it bears no reasonable or substantial relation to the public health, safety, morals, or general welfare.

Board of Supervisors v. Allman, 215 Va. 434, 444, 211 S.E.2d 48, 54 (1975); *Boggs v. Board of Supervisors*, 211 Va. 488, 490, 178 S.E.2d 508, 509-10 (1971); *Board of Supervisors v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959).

5. *See* VA. CODE ANN. § 15.1-489 (Cum. Supp. 1975).

6. *See, e.g.*, *Board of Supervisors v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975) (denial of request for higher density zoning was discriminatory); *Boggs v. Board of Supervisors*, 211 Va. 488, 178 S.E.2d 508 (1971) (refusal to rezone was declared arbitrary and capricious); *Board of Supervisors v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959) (comprehensive ordinance unreasonable and arbitrary).

valid, the burden being placed upon the challenger of the ordinance to show clearly its invalidity.⁷ Under no circumstances may a locality, under guise of the police power, impose arbitrary or unreasonable restraints upon the use of private property.⁸

In *Board of Supervisors v. Rowe*,⁹ the Virginia Supreme Court was asked to affirm the invalidation of several provisions of a zoning ordinance adopted by the James City County Board of Supervisors.¹⁰ Appellee landowners contended that several sections of the ordinance denied equal protection¹¹ and due process of law.¹² The provisions attacked were those providing a new classification for zoning districts,¹³ large setback require-

7. The presumptive reasonableness must be challenged by probative evidence of unreasonableness. If the evidence of unreasonableness is sufficient to overcome the presumption, the burden of producing evidence shifts to the locality which must produce further proof of reasonableness or the ordinance will not be sustained. If evidence of reasonableness is sufficient to make the question "fairly debatable," the ordinance must be sustained. If not, the locality has failed in its burden and the ordinance will not stand. See *City of Richmond v. Randall*, 215 Va. 506, 511, 211 S.E.2d 56, 60 (1975); *Board of Supervisors v. Allman*, 215 Va. 434, 444-45, 211 S.E.2d 48, 55 (1975); *Board of Supervisors v. Snell Constr. Corp.*, 214 Va. 655, 659, 202 S.E.2d 889, 893 (1974).

8. *City of Alexandria v. Texas Co.*, 172 Va. 209, 215, 1 S.E.2d 296, 298 (1939).

9. 216 Va. 128, 216 S.E.2d 199 (1975).

10. JAMES CITY COUNTY, VA., ZONING ORDINANCE ch. 20, art. 8A (1973). The trial court granted complainants' motion for declaratory judgment, holding the ordinance deprived complainants of reasonable use of their property without due process of law, discriminated against property owners, and imposed unreasonable restrictions upon their land. Joint Appendix at 16, *Board of Supervisors v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975). A motion for declaratory judgment at law is a proper form of redress for an aggrieved landowner. *Board of Supervisors v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959); *Board of Supervisors v. Davis*, 200 Va. 316, 106 S.E.2d 152 (1958). For the statute governing such procedure see VA. CODE ANN. § 8-578 (Repl. Vol. 1957). Since the original motion in *Rowe* included a request for injunctive relief, this was a case in equity. An action for declaratory judgment may, however, be maintained on either side of the court. *Carr v. Union Church*, 186 Va. 411, 42 S.E.2d 840 (1947).

11. A zoning ordinance, as any exercise of the state's police power, must conform to specific provisions of the state and federal constitutions. See, e.g., *Buck v. Bell*, 143 Va. 310, 130 S.E. 516 (1925). When a landowner challenges an ordinance as arbitrary and unreasonable as applied to him, he is alleging violation of the specific constitutional provision that "[n]o state shall . . . deny to any person within its jurisdiction equal protection of the laws." U.S. CONST. amend. XIV, § 1; see E. YOKLEY, ZONING LAW & PRACTICE §§ 2-16 (3d ed. 1965).

12. A landowner challenging an ordinance on this basis is alleging that the zoning ordinance, in "protecting" the public welfare, deprives him of the reasonable use of his land to such an extent as to constitute a "taking" for public use without just compensation or due process of law. See U.S. CONST. amend. V; VA. CONST. art. I, § 11. For a general discussion of the constitutional scope of the zoning police power see 1 E. YOKLEY, ZONING LAW & PRACTICE § 2 (3d ed. 1965).

13. The ordinance created a new district classification (the B-2 Business Tourist Entry District) intended to encourage the most appropriate use of land, maintain the distinctive historical character of the region, and encourage development of tourist facilities in an attrac-

ments,¹⁴ minimum lot size,¹⁵ and exclusion of several classifications by commercial uses.¹⁶ Further, the landowners challenged the constitutionality¹⁷ of articles requiring as prerequisites to development the dedication of land to the county for an access road (to be funded by the landowners)¹⁸ and review of architectural design.¹⁹ The supreme court affirmed the invalidation of these provisions, declaring the entire ordinance void on its face.²⁰

The court reached its decision by examining three broad constitutional issues: (1) whether application of a zoning classification to a single area, to the exclusion of similar areas, denies equal protection; (2) whether dedication requirements violate due process guarantees; (3) to what extent "use restrictions" may be imposed without violating due process and equal protection. In examining the first of these issues, the court reaffirmed established Virginia law that the arbitrary placing of boundary lines will not invalidate a zoning ordinance.²¹ The landowners argued the zoning

tive and harmonious manner. JAMES CITY COUNTY, VA., ZONING ORDINANCE ch. 20, art. 8A (1973).

14. Buildings were to be located no closer than 70 feet from the highway. *Id.* art. 8A-2.

15. For permitted uses, minimum lot area was 32,500 square feet. *Id.* art. 8A-3-1. Minimum lot width was set at 150 feet, or 120 feet if the lot was in existence at the time the ordinance was passed. *Id.* art. 8A-4.

16. Commercial property use was restricted to hotels, motels, service stations (with light repairs under cover only), gift and antique shops, indoor theatres, art galleries, and restaurants other than fast food establishments. *Id.* art. 8A-1-1 to -8.

17. See note 12 *supra*.

18. Fifty feet of the required setback was to be reserved for the construction of a public access road in accordance with the applicable standards of the Virginia Department of Highways. JAMES CITY COUNTY, VA., ZONING ORDINANCE ch. 20, art. 8A-2 (1973). The court in its opinion treated the construction and maintenance requirements somewhat separately from the land dedication requirements. However, since most authorities place both under the general heading of "dedication," such will be the treatment in this note.

19. Architecture was to be approved by a design review board to ensure that all buildings remained distinct from Colonial Williamsburg. *Id.* art. 8A-11.

20. 216 Va. at 148, 216 S.E.2d at 215. The appellants asked the court to retain those portions of the ordinance not declared unconstitutional on the basis of a severability provision adopted by the Board of Supervisors eight weeks after the start of the litigation. *Id.* at 147, 216 S.E.2d at 214. The court applied the test set forth in *Hannabass v. Maryland Cas. Co.*, 169 Va. 559, 194 S.E. 808 (1938). The determination as to the existence of a severability provision turns on the intent of the lawmakers. *Id.* at 571, 194 S.E. at 813. The court held that after the unconstitutional provisions of the ordinance were removed, its purpose and spirit were destroyed and the remaining parts were mere appendages, wholly without function. 216 Va. at 148, 216 S.E.2d at 215.

21. This rule was set forth in *West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 192 S.E. 881, *appeal dismissed per curiam*, 302 U.S. 658 (1937), where the appellant claimed that the lines of a residential zone had been arbitrarily drawn to include his business. In upholding the ordinance the court said:

Necessarily any plan . . . must be in some degree arbitrary. It is seldom that there is any definite reason for holding that a lot on one side of a line should be devoted to

classification was arbitrary and unreasonable as applied to them, since adjacent land was zoned differently.²² The court held, however, that while the classification of adjacent property is a relevant consideration in the evaluation of zoning ordinances, such areas may be zoned differently where there is a rational basis.²³ Zoning classifications may not discriminate between landowners similarly situated, but a certain amount of arbitrariness will be tolerated in the placement of district boundaries.²⁴ Unless specific evidence is shown to the contrary, the different classification will continue to enjoy its presumption of validity.²⁵

Localities in Virginia have used various means to avoid growth pressures. One means is to compel a developer to dedicate land for public facilities as a condition precedent to development.²⁶ In *Rowe*, appellees' attack on James City County's dedication requirement presented a case of first impression in Virginia. The supreme court, limiting its opinion to the facts of this case alone, held the property owners could not constitutionally be compelled to dedicate land to the county as a condition precedent to development.²⁷

The court appears to have based its opinion on two concepts. First, appellees were a collection of individual landowners, not a subdivider.²⁸

one purpose and that just across it to another. . . .

"The boundary line of a zoning district must be fixed in some locality. In the very nature of things it must always be more or less arbitrary, because the property on one side of a line cannot, in the very nature of things, be very different from the property on the other side of the line." *Id.* at 283-84, 192 S.E. at 886, quoting from *In re Dawson*, 136 Okla. 113, ___, 277 P. 226, 228 (1929).

22. Adjacent property owned by Anheuser-Busch was zoned for manufacturing. Brief for Appellees at 21, 216 Va. 128, 216 S.E.2d 199 (1975).

23. 216 Va. at 135, 216 S.E.2d at 206. See 8 E. McQUILLIN, MUNICIPAL CORPORATIONS § 25.61 (3d ed. 1965); 1 E. YOKLEY, ZONING LAW & PRACTICE § 4-17 (3d ed. 1965).

24. *West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 283-84, 192 S.E. 881, 886, appeal dismissed *per curiam*, 302 U.S. 658 (1937).

25. See, e.g., *Board of Supervisors v. Carper*, 200 Va. 653, 660, 107 S.E.2d 390, 395 (1959); *County of Fairfax v. Parker*, 186 Va. 675, 680, 44 S.E.2d 9, 11-12 (1947). In the presence of such evidence, however, the court will invalidate a zoning classification. See, e.g., *City of Richmond v. Randall*, 215 Va. 506, 511-12, 211 S.E.2d 56, 60 (1975), where the court found the classification of an area for single family dwellings unreasonable when placed between two areas of heavy commercial development. In the *Rowe* case, the only evidence was that adjacent property was zoned differently and that similar areas in the county had similar traffic patterns.

26. Other methods used to control growth pressures include moratoriums on rezoning, subdividing, issuance of building permits, and large lot zoning. Dolbeare, *Mandatory Dedication of Public Sites as a Condition in the Subdivision Process in Virginia*, 9 U. RICH. L. REV. 435 (1975).

27. 216 Va. at 138-39, 216 S.E.2d at 208-09.

28. The original complainants were 24 landowners owning a combined total of 59 parcels. Joint Appendix at 1-2, 216 Va. 128, 216 S.E.2d 199 (1975).

The court intimated that had the latter been true, Virginia might have joined the growing number of jurisdictions allowing such dedication requirements.²⁹ Under Virginia's statutes, localities are granted the power to enact ordinances regulating the development of subdivisions.³⁰ Such ordinances may include provisions providing for acceptance of dedications for public streets, curbs, and other improvements.³¹ As a result, a strong argument may be made that municipalities could require mandatory dedications of subdividers pursuant to these regulatory powers.³² The court chose, however, to leave the issue open, holding only that the statutes cannot apply to individual landowners.³³ As an alternative ground, enabling statutes delegate no power to impose dedication requirements upon a developer, unless the need for such dedication arises out of public demand generated by his development.³⁴ Therefore, even if the landowner in *Rowe* had been a subdivider, if his development did not generate a specific need

29. 216 Va. at 138, 216 S.E.2d at 208. "It is almost universally held that it is within the police power of the state legislature to require such a voluntary donation." Frank Ansuini, Inc. v. City of Cranston, 107 R.I. 63, ___, 264 A.2d 910, 913 (1970); *accord*, Ayres v. City Council, 34 Cal. 2d 31, 207 P.2d 1 (1949); Aunt Hack Ridge Estates, Inc. v. Planning Comm'n, 27 Conn. Supp. 74, 230 A.2d 45 (1967); Pioneer Trust & Sav. Bank v. Mount Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961); Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 394 P.2d 182 (1964); Jenad, Inc. v. Village of Scarsdale, 18 N.Y.2d 78, 218 N.E.2d 673, 271 N.Y.S.2d 955 (1966); Jordan v. Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 442 (1965), *appeal dismissed per curiam*, 385 U.S. 4 (1966).

30. "The governing body of any county or municipality shall adopt an ordinance to assure the orderly subdivision of land and its development." VA. CODE ANN. § 15.1-465 (Cum. Supp. 1975) (effective July 1, 1977), *amending* VA. CODE ANN. § 15.1-465 (Repl. Vol. 1973) (which stated an ordinance "may" rather than "shall" be adopted).

31. VA. CODE ANN. § 15.1-466(f) (Cum. Supp. 1975). Placing of public area designations on a subdivision plat operates to transfer to the county in fee simple such premises. *Id.* § 15.1-478.

32. 216 Va. at 137-38, 216 S.E.2d at 208.

33. *Id.*

34. Several jurisdictions have adopted this view, holding that any dedication requirement must be specifically and uniquely attributable to the particular development. Pioneer Trust & Sav. Bank v. Mount Prospect, 22 Ill. 2d 375, 176 N.E.2d 799 (1961) (school costs not caused by subdivision but by entire community); Frank Ansuini, Inc. v. City of Cranston, 107 R.I. 63, 264 A.2d 910 (1970) (the need for percentage dedication requirement for recreation could not be considered specifically attributable to a subdivider). Other jurisdictions hold the locality's power to demand dedication does not exclusively depend on the use of facilities by occupiers of the subdivision. Associated Home Builders, Inc. v. Walnut Creek, 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630 (1971), *appeal dismissed*, 404 U.S. 878 (1971) (dedication of land, fees, or both for park purposes); Jordan v. Menomonee Falls, 28 Wis. 2d 608, 137 N.W.2d 442 (1965), *appeal dismissed per curiam*, 385 U.S. 4 (1966) (dedication for school, park, and recreational sites). For further discussion concerning the interpretations in other jurisdictions see Annot., 43 A.L.R.3d 862 (1972). For possible effects of these approaches upon Virginia law see Dolbeare, *Mandatory Dedication of Public Sites as a Condition in the Subdivision Process in Virginia*, 9 U. RICH. L. REV. 435 (1975).

for a public dedication, none could be required.

Finally, the court evaluated the scope of a locality's authority to impose specific restrictions upon the various uses of land. Landowners contended the restrictions in the James City County Code effected a denial of due process and equal protection. Localities have the statutory power to limit construction in a zoning district,³⁵ and the exercise of that power enjoys a legislative presumption of validity which must be rebutted by probative evidence of arbitrary and unreasonable discrimination.³⁶ Significantly, the court measured the ordinance's discriminatory results by considering its collective effect upon all land in the district rather than its effect on each individual landowner.³⁷ In *Rowe*, the cumulative effect of lot restrictions rendered 29% of the land undevelopable.³⁸ Clearly this was an unreasonable taking of property.³⁹

Likewise, the court concluded that a zoning classification cannot prohibit or restrict certain uses and permit other uses where there is no valid basis reasonably related to the police power for distinguishing between them.⁴⁰ In the *Rowe* case, the court concluded the distinctions made⁴¹ were completely artificial and not related to any proper exercise of the police power.⁴² Where there is no evidence that a use will be "noxious, dangerous,

35. Local governing bodies may adopt ordinances to "restrict, permit, prohibit, and determine . . . [t]he areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses. . . ." VA. CODE ANN. § 15.1-486 (Cum. Supp. 1975). The court has repeatedly recognized the authority of local governments to adopt setback line restrictions. *French v. Town of Clintwood*, 203 Va. 562, 125 S.E.2d 798 (1962); *Nusbaum v. City of Norfolk*, 151 Va. 801, 145 S.E. 257 (1928); *Gorieb v. Fox*, 145 Va. 554, 134 S.E. 914 (1926), *aff'd*, 274 U.S. 603 (1927).

36. See note 7 and accompanying text *supra*.

37. This approach arguably distinguishes the rule of interpretation set forth in *County of Fairfax v. Parker*, 186 Va. 675, 44 S.E.2d 9 (1947). In that case, the complainant asserted that a zoning ordinance deprived all property owners within the county of their rights. The court held, however, that a landowner attacking the ordinance could assert only the harm done to his interests, not that done to others. *Id.* at 680, 44 S.E.2d at 11. In *Board of Supervisors v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959), the court said that the welfare of all persons within a zoned district was to be considered in evaluating the reasonableness of a zoning ordinance. *Id.* at 662, 107 S.E.2d at 396-97.

38. 216 Va. at 141, 216 S.E.2d at 210. The market value of the land rendered undevelopable was \$1,959,167.35. *Id.*

39. See note 12 and accompanying text, *supra*.

40. 216 Va. at 143, 216 S.E.2d at 212.

41. Hotels, motels, and theatres were permitted; banks, office buildings, and grocery stores were prohibited. Antique shops were permitted, but shops selling antique reproductions were prohibited. Restaurants were allowed; fast food or drive-in restaurants were not. *Id.*

42. Other jurisdictions have split on whether such distinctions between forms of uses can be made. See, e.g., *Frost v. Glen Ellyn*, 30 Ill. 2d 241, 195 N.E.2d 616 (1964) (exclusion of a drive-in restaurant from a business zone is unreasonable). *Contra*, *Ben Lomond, Inc. v. Idaho*

or otherwise inimical to the public health, safety, and welfare"⁴³ it may not be excluded.

In addition to commercial restrictions, land use limitations included permissible types of architecture. Landowners were prohibited from building upon their parcels until architectural form was approved by a design review board.⁴⁴ Such restraint, the court held, was not within the statutory power of the county to create a "convenient, attractive and harmonious community."⁴⁵ The legislature's grant of power to harmonize communities did not include limiting the use of property solely on the basis of aesthetic considerations.⁴⁶ While aesthetics is a relevant consideration to be weighed in the drafting of a zoning ordinance, other elements of the police power must also be present and controlling.⁴⁷ Incidental presence of other purposes promoting the public health, safety and welfare will not validate an ordinance when it appears that its primary scope is aesthetically oriented.⁴⁸

In *Rowe*, the supreme court redefined the power of localities in Virginia to regulate growth and development through zoning ordinances. Zoning classifications continue to enjoy a presumption of validity by the courts.

Falls, 92 Idaho 595, 448 P.2d 209 (1968) (there is a distinction between drive-ins and full service restaurants for zoning purposes). See also Annot., 82 A.L.R.2d 989 (1962) for a discussion of the zoning of fast food establishments.

43. 216 Va. at 144, 216 S.E.2d at 212. See also *County of Fairfax v. Parker*, 186 Va. 675, 688, 44 S.E.2d 9, 15 (1947) (upholding a use restriction against a commercial junkyard within a residential district); *Cherrydale Cement Block Co. v. County Bd.*, 180 Va. 443, 23 S.E.2d 158 (1942) (exclusion of industrial plant from residential area upheld); *West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 192 S.E. 881, *appeal dismissed per curiam*, 302 U.S. 658 (1937) (brick pit exclusion from residential district held valid).

44. See note 19 *supra*.

45. VA. CODE ANN. § 15.1-489 (Cum. Supp. 1975).

46. Virginia has consistently stated that zoning solely for aesthetic reasons is not a valid exercise of the police power in this state. See *Kenyon Peck, Inc. v. Kennedy*, 210 Va. 60, 64, 168 S.E.2d 117, 120 (1969); *West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 282-83, 192 S.E. 881, 885-86 (1937). While this is still the majority view in most jurisdictions, a growing minority hold ordinances based on aesthetics may be valid. See generally, Annot., 21 A.L.R.3d 1222 (1968). For a general survey of zoning and aesthetics see Note, *Beyond the Eye of the Beholder: Aesthetics and Objectivity*, 71 MICH. L. REV. 1438 (1973).

47. The county argued that other grounds for applying the police power were found in VA. CODE ANN. § 15.1-503.2(a) (Cum. Supp. 1975), which authorizes certain counties, including James City, to adopt ordinances setting forth the historical landmarks within the county and to create one or more historical districts in which no building can be built unless architecturally compatible with the historic landmark. The court found that this statute did not apply since there was no designated landmark within one quarter mile of the B-2 district, and the ordinance requires architecture distinct from rather than compatible with Colonial Williamsburg. 216 Va. at 145-46, 216 S.E.2d at 213-14.

48. Other jurisdictions have, however, recognized the validity of architectural design restrictions. See Annot., 41 A.L.R.3d 1397 (1972).

Virginia refused, however, to join the growing number of jurisdictions which have expanded this presumption to include classifications based solely on aesthetics.⁴⁹ Likewise, if an arbitrary basis can be shown for exclusion of similar use forms, the presumption will be rebutted. It is submitted that the Supreme Court of Virginia will permit local governments to require mandatory dedications as conditions precedent to land development if the landowner is a subdivider and the subdivision generates a need for such a public dedication. But, it appears from this decision that Virginia will not allow great expansion of local zoning power in controlling certain aspects of land use. The court will remain protective of the rights of the private landowner when they conflict with expanding governmental control of growth and development.

R.H.M.

49. *See note 46 supra.*

